

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
)
ALEX AND ANI, LLC, <i>et al.</i> , ¹) Case No. 21-10918 (CTG)
)
Debtors.) (Jointly Administered)
)

**SECOND SUPPLEMENTAL DECLARATION OF
JOSHUA A. SUSSBERG IN SUPPORT OF THE DEBTORS'
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE RETENTION AND EMPLOYMENT OF KIRKLAND & ELLIS LLP
AND KIRKLAND & ELLIS INTERNATIONAL LLP AS ATTORNEYS FOR
THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF JUNE 9, 2021**

I, Joshua A. Sussberg, being duly sworn, state the following under penalty of perjury:

1. I am the president of Joshua A. Sussberg, P.C., a partner of the law firm of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022, and a partner of Kirkland & Ellis International, LLP (together with Kirkland & Ellis LLP, collectively, “Kirkland”). I am one of the lead attorneys from Kirkland working on the above-captioned chapter 11 cases. I am a member in good standing of the Bar of the State of New York, and I have been admitted to practice in New York State Court, and I have been admitted *pro hac vice* in the United States Bankruptcy Court for the District of Delaware. There are no disciplinary proceedings pending against me.

2. On June 9, 2021, each of the above-captioned debtors and debtors in possession filed a petition in the United States Bankruptcy Court for the District of Delaware under chapter 11

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939); Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215); Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477); and Alex and Ani South Seas, LLC (8592). The Debtors’ headquarters and mailing address is: 10 Briggs Drive, East Greenwich, RI 02818.

of title 11 of the United States Code. On June 28, 2021, the Debtors filed the *Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 130] (the “Application”)² pursuant to sections 327(a) and 330 of the Bankruptcy Code, rules 2014(a) and 2016 of the Bankruptcy Rules, and the Local Rules.

3. In support of the Application, the Debtors filed the *Declaration of Joshua A. Sussberg in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021*, which was attached to the Application as Exhibit B [Docket No. 130, Ex. B.] (the “Original Declaration”). On July 15, 2021, the Debtors filed the *Supplemental Declaration of Joshua A. Sussberg in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 203] (the “First Supplemental Declaration,” and together with the Original Declaration, the “Prior Declarations”). On July 15, 2021, the Court entered the *Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2021* [Docket No. 209].

4. I submit this supplemental declaration (this “Second Supplemental Declaration”) to supplement the disclosures set forth in the Prior Declarations in accordance with Bankruptcy Rules 2014(a) and 2016(b). Except as otherwise indicated herein, all facts stated in this Second Supplemental Declaration are based on my personal knowledge of Kirkland’s operations and

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

finances, information learned from my review of relevant documents, and information supplied to me by Kirkland's partners or employees. If called upon to testify, I could and would testify on that basis.

Additional Disclosures

5. As set forth in the Prior Declarations and herein, Kirkland may in the past have represented, currently may represent, and may in the future represent certain of the Debtors' creditors, equity security holders, or other parties in interest in ongoing matters unrelated to the Debtors and these chapter 11 cases. None of the representations described herein or set forth on **Schedule 2** are materially adverse to the interests of the Debtors' estates. Moreover, pursuant to section 327(c) of the Bankruptcy Code, Kirkland is not disqualified from acting as the Debtors' counsel merely because it represents certain of the Debtors' creditors, equity security holders, or other parties in interest in matters unrelated to these chapter 11 cases.

6. Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Certain connections were disclosed in the Prior Declarations. In addition to the entities searched and disclosed in the Prior Declarations, Kirkland has searched its electronic database for the entities listed on **Schedule 1**, attached hereto. Kirkland will update its disclosures as necessary and when Kirkland becomes aware of material information. The following is a list of the additional categories that Kirkland has searched:³

<u>Schedule</u>	<u>Category</u>
1(a)	Contract Counterparties
1(b)	Notices of Appearance/Pro Hac Vices
1(c)	Ordinary Course Professionals
1(d)	Sale Parties
1(e)	Taxing Authorities

³ Kirkland's inclusion of parties in the following schedules is solely to illustrate Kirkland's conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

1(f) Vendors

7. I have included the results of Kirkland's conflicts searches of the above-listed entities on Schedule 2 to this Second Supplemental Declaration.⁴ In addition, Kirkland re-ran searches in its electronic database for the entities that were previously reviewed in the Prior Declarations. The entities that were re-ran are listed on Schedule 3. All current and prior representations of the parties identified on Schedules 2 and 3 are in matters unrelated to the Debtors and these chapter 11 cases.

8. The Debtors are parties to non-disclosure agreements with certain potential bidders (the “Confidential Parties”) that contractually obligate the Debtors to maintain the confidentiality of the identities of the Confidential Parties. Due to the potential for litigation and remedies that the Confidential Parties may be entitled to seek if the Debtors breach the non-disclosure agreements, it is imperative that the identities of the Confidential Parties remain confidential. The Debtors will disclose to the U.S. Trustee and counsel to the Committee the identities of the Confidential Parties and Kirkland’s connections to such Confidential Parties (including whether such parties are current clients on wholly unrelated matters), and Kirkland believes such disclosure is sufficient and reasonable under the circumstances and at this time. The Debtors are also filing under seal a version of this Declaration that contains a schedule of the Confidential Parties and Kirkland’s connections to such Confidential Parties. For the avoidance of doubt, Kirkland has not

⁴ As referenced in Schedule 2, the term “current client” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted in the 12 months preceding the Petition Date. As referenced in Schedule 2, the term “former client” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted between 12 and 36 months preceding the Petition Date. As referenced in Schedule 2, the term “closed client” means an entity listed as a client in Kirkland’s conflicts search system to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. Whether an actual client relationship exists can only be determined by reference to the documents governing Kirkland’s representation rather than its potential listing in Kirkland’s conflicts search system. The list generated from Kirkland’s conflicts search system is over-inclusive. As a general matter, Kirkland discloses connections with “former clients” or “closed clients” for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

and will not represent any of the Confidential Parties in connection with any matter in these chapter 11 cases.

9. One of the Confidential Parties and/or certain of its affiliates were potential bidders for the Debtors' assets. Such Confidential Party and certain of its affiliates are clients of Kirkland and represented more than one percent of Kirkland's fee receipts for the twelve-month period ending on August 31, 2021. Kirkland did not represent such Confidential Party and/or any of its affiliates in connection with the Debtors' chapter 11 cases or in connection with such Confidential Parties' potential bid for the Debtors. I do not believe that any current or former representation of such Confidential Party or its affiliates that are Kirkland clients precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

10. As disclosed on Schedule 2, Kirkland currently represents, and in the past has represented, certain affiliates, subsidiaries, and entities associated with Deloitte (such affiliates, subsidiaries, and entities, collectively "Deloitte"), one of the Debtors' ordinary course professionals. Kirkland's current and prior representations of Deloitte have been in matters unrelated to the Debtors or these chapter 11 cases. Kirkland has not represented, and will not represent, Deloitte in connection with any matter in these chapter 11 cases during the pendency of these chapter 11 cases. I do not believe that Kirkland's current or prior representation of Deloitte precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

11. Based on the conflicts searches conducted to date and described in this Second Supplemental Declaration and the Prior Declarations, to the best of my knowledge and insofar as I have been able to ascertain, neither Kirkland nor any of its partners or associates has any connection with the Debtors or any party in interest in the chapter 11 cases except as disclosed or otherwise described in this Second Supplemental Declaration and in the Prior Declarations.

12. Generally, it is Kirkland's policy to disclose entities in the capacity that they first appear in a conflicts search. For example, if an entity already has been disclosed in the Prior Declarations in one capacity (*e.g.*, a customer), and the entity appears in a subsequent conflicts search in a different capacity (*e.g.*, a vendor), Kirkland does not disclose the same entity again in supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

Affirmative Statement of Disinterestedness

13. Based on the conflicts search conducted to date and described herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) Kirkland is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates, and (b) Kirkland has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed herein.

[Remainder of page intentionally left blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 9, 2021

Respectfully submitted,

/s/ Joshua A. Sussberg

Joshua A. Sussberg
as President of Joshua A. Sussberg, P.C., as
Partner of Kirkland & Ellis LLP; and as Partner
of Kirkland & Ellis International LLP

SCHEDULE 1

List of Schedules

<u>Schedule</u>	<u>Category</u>
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1(a)	Contract Counterparties
1(b)	Notices of Appearance/Pro Hac Vices
1(c)	Ordinary Course Professionals
1(d)	Sale Parties
1(e)	Taxing Authorities
1(f)	Vendors

SCHEDEULE 1(a)

Contract Counterparties

Collegiate Licensing Co. LLC
Forbes Co., The
Howard, Jaime
Life Insurance Co. of North America
Macerich Co., The
MLB Advanced Media LP
Person, Shannon
Simon Property Group Inc.
TM Partridge Creek Mall LP
Trademark Property Co.
TVO Mall Owner LLC
Universal Studios Licensing LLC
Witsen, Kelly

SCHEDULE 1(b)

Notices of Appearance/Pro Hac Vice

Bowie Central Appraisal District
Brookfield Properties Retail Inc.
Forbes Co., The
Fort Bend, County of (TX)
Galveston, County of (TX)
Grapevine, City of (TX)
Grapevine-Colleyville Independent School District
Harris, County of (TX)
Hays, County of (TX)
LC A&A Holdings Inc.
LC A&A Intermediate Investors LLC
Macerich Co., The
Montgomery, County of (TX)
Plaza del Caribe SE
Plaza las Americas Inc.
PREIT Services LLC
Simon Property Group Inc.
Wilmington Trust NA

SCHEDULE 1(c)

Ordinary Course Professionals

Adler Pollock Sheehan PC
Anand & Anand
Blum Shapiro & Co. PC
Bodman PLC
Casner Edwards LLP
Chestnut Cambronne Attorneys at Law
Cohen Cleary PC
CPA Global Ltd.
CT Corp. Systems
Deloitte Touche Tohmatsu LLC
Gowling WLG Canada LLP
Hausfeld LLP
Humphrey, Dick
KPMG LLP
Law Offices of F. Bryan Brice, Jr.
Sax LLP
Zumpano Patricios & Popok PLLC

SCHEDULE 1(d)

Sale Parties

[CONFIDENTIAL]

SCHEDULE 1(e)

Taxing Authorities

Brooklyn, Village of (IL)
Clear Creek ISD (TX), Tax Office
Davidson, County of (NC), County Clerk
Delaware, State of, Secretary of State
Greater Westfield Area Chamber of Commerce
Hillsborough, County of (FL), Tax Collector
Knoxville, City of (TN)
Macomb, County of (MI), Treasurer
Natick, Town of (MA)
New Jersey, State of
New York, City of (NY), Department of Finance, Finance Commissioner
Ohio, State of, Attorney General
San Juan, Municipality of (Puerto Rico)
Sarasota, City of (FL)
Southampton Chamber of Commerce Inc.
Washington, State of

SCHEDULE 1(f)**Vendors**

A Day for Children
 Abbott-Action Inc.
 Advanced Security Group Inc.
 African American Women in Cinema
 Aid Our Veterans
 Aisiling & Olivia Fun Run
 Alianza Laura Aponte Para La Paz Social Inc.
 Allied Fire Protection Inspection Services Inc.
 American Red Cross
 Ars Networking
 Avon 39
 Bambora
 Bce Business Services LLC
 Boteon, Juliana
 Caesura Youth Orchestra
 Canadian Network of Women's Shelters & Transition Houses
 Capron Park Zoo
 Central Maine Power Co.
 Centros Sor Isolina Ferrer
 Certified Retail Solutions
 ChemArt Co.
 Cherry Hill Board of Education
 Ching Farm Rescue
 D. Augustus Straker Bar Association
 Dancing Saved My Life
 Destination Dino Liam Inc.
 Dress for Success Greater Orlando
 Duquesne University Delta Zeta Society
 Durga Tree International
 Eaglethon at American University
 East Providence High School Band
 Endicia
 Estrada, George
 Expivi Inc.
 Familes for Encore Entries
 Freehold, Town of (NJ), Fire Bureau
 Girl Scouts of Citrus Council Inc.
 Girls Win Inc.
 Global Facility Management & Construction Inc.
 Graficas Corona Je SA De CV
 Grand Council Ladies Oriental Shrine of North America Foundation
 H2O Toronto
 Halo Dance 4 Autism Foundation
 Handy Foundation, The
 Hoffman Elite Enterprises Ltd.
 International Systems of America LLC
 Jacobacci & Partners SA
 Jamie Leigh Jones Foundation for Dual Diagnosis of Chronic Illness
 Junior League of Pittsburgh
 Just Speak Inc.
 King of Prussia Associates Inc.
 King of Prussia Business Improvement District
 Labs for Liberty
 Lending Hearts & Hands Inc.
 Leukemia & Lymphoma Society
 Leukemia & Lymphoma Society, The
 Lighten Creative Marketing Group
 Little Falls Media LLC
 LogMeIn Inc.
 Lyncrest Elementary School PTO
 Macomb Community Drug Courts Inc.
 Maine Cancer Foundation
 Massachusetts Veterinary Medical Association Stray Animal Fund Inc.
 Medonald Hopkins LLC
 Miller Advertising Agency Inc.
 Mr. Rooter Plumbing of Delaware & Salisbury
 NAMI Sacramento
 New England Environmental & Consulting
 Northeast High School
 Northeast Trailer Remarketing Corp.
 Nuance Group AG, The
 Ocean State Disposal
 One Entertainment Group LLC
 Operation Buddy Rescue Cats & Kittens

Our Hearts Beat For Scarlett Foundation
Inc.
Palm Beach, City (FL), Gardens Business
Services Division
Palo Alto, City of (CA), False Alarm
Reduction Program
PAWS of Rochester
Phi Mu Foundation
Pro Portsmouth Inc.
Richardson, Sonja
Rising American Indian Nations
Rocket Jewelry Box Inc.
Sage Software Inc.
Sandgate Womens Shelter of York Region
Inc.
Sarasota, County of (FL), Veterans Services,
Veterans Commission
Saratoga Regional YMCA
Sharon Randolph Foundation
Sigma Sigma Sigma
Six Consulting LLC
Smartsheet Inc.
Somers, Christopher
South Florida Wildlife Center, The
Square One Older Adult Centre
St. Jude Children's Research Hospital Inc.
St. Louis College of Pharmacy
Statewide Fire Protection Co.
Street Angel Project Inc.
Substantial Brand Ltd Co.
Ten Lives Club Galleria
Tragic Is Magic Scholarship Fund
University of Massachusetts, Trademark &
Licensing Administration
University of Pittsburgh
University of Pittsburgh Law Student Bar
Association
V Palm Springs
Vineland PTA
Water.Org University of Toronto Chapter
William Patterson University Cheerleading
Wilson 150 Worth LLC
Youth for the Fight
Zebrafish Labs Inc.

SCHEDULE 2

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
American Red Cross	American Red Cross of Greater Chicago	Closed
Confidential	Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential Confidential	Current Former Current Current Current Current Current Closed Current Current Current Former Current Current Current Current
Confidential	Confidential	Current
Confidential	Confidential Confidential Confidential	Closed Closed Current
Deloitte Touche Tohmatsu LLC	Deloitte Consulting LLP Deloitte LLP Deloitte Tax LLP Deloitte USA LLP	Current Current Current Current
Confidential	Confidential Confidential Confidential Confidential Confidential	Closed Current Current Closed Current

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
	Confidential	Current
	Confidential	Current
	Confidential	Closed
	Confidential	Closed
	Confidential	Current
Confidential	Confidential	Former
TM Partridge Creek Mall LP	Jones Lang LaSalle Income Property Trust, Inc. LaSalle Investment Management / Jones Lang LaSalle Group	Current Current

SCHEDULE 3

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
Ala Moana Center	Oaktree ATI Investors LP	Current
Beachwood Place Mall LLC	Oaktree Power Opportunities Fund IV (Parallel) LP	Current
Brookfield	Oaktree Power Opportunities Fund IV LP	Current
Brookfield Properties Retail Inc.		
Christiana Mall LLC		
Fashion Show Mall LLC		
Glendale Galleria, The		
Glendale Galleria, The		
Glendale I Mall Associates		
Glendale I Mall Associates		
Grand Canal Shops II LLC		
Kenwood Mall LLC		
Kenwood Towne Center		
Mayfair Mall LLC		
Natick Mall LLC		
Oakbrook Shopping Center LLC		
Oakbrook Urban Venture LP		
Perimeter Mall LLC		
Towson Town Center LLC		
Water Tower Joint Venture		
Whalers Village		
WV Sub LLC		
Fermata Partners LLC	TPG Global Infrastructure Partners LP	Current
LogMeIn Inc.	Concorde Midco Limited	Current
PayFactors Group LLC		
New England Label Inc.	Resource Label Group LLC RLG Parent L.P.	Current Current
Special Olympics Inc.	Special Olympics Massachusetts	Current
Xcellence Inc.	GI Valet Acquisition Inc. GI Valet Parent Inc. GI Valet Topco LP Travis R. Pearson	Current Current Current Current